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DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-199755.3

DATE: August 5, 1981

MATTER OF: Colorado Research and Prediction
Laboratory, Inc. -- Reconsideration**DIGEST:**

1. When second request for reconsideration is filed more than 10 days after basis for it is known or should have been known, request will be dismissed.
2. Technically acceptable proposal may be eliminated from competitive range if it has no real chance for award.
3. In appropriate circumstances, GAO will reconsider decision if request is timely filed following receipt of new information under Freedom of Information Act; however, failure to file early FOIA request may constitute failure to diligently pursue protest.

Colorado Research and Prediction Laboratory, Inc. requests that we reopen and reconsider its protest regarding the Air Force's award of a contract for a study of low frequency and very low frequency radio propagation parameters to the incumbent contractor, Magapulse. In our decision, Colorado Research and Prediction Laboratory, Inc., B-199755, March 5, 1981, 81-1 CPD 170, we denied the protest in part and dismissed the remainder as either not for review by our Office or untimely. That decision was affirmed upon reconsideration in B-199755.2, May 11, 1981, 81-1 CPD 369.

[Reconsideration of Protest Regarding Air Force Contract]

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In its protest, Colorado Research alleged that the Air Force never intended to have a real competition, but had used the negotiation process to induce Megapulse to lower its price and to give the appearance of competition. In addition, the protester alleged that Megapulse lacked the theoretical background needed for the studies being procured and that Colorado Research had been denied data, proprietary to Megapulse, which would have enabled it to write a competitive technical proposal.

We found no evidence of preferential treatment of Megapulse or unfair action toward Colorado Research in the record, and denied the protest on the first basis. We also found that the solicitation, read as a whole, indicated that the study would be primarily experimental, not theoretical; in any event, we indicated, whether Megapulse had the necessary background was a matter of responsibility. Our Office does not review affirmative determinations of responsibility except in circumstances not applicable to Colorado Research's protest, so we dismissed the protest on this basis.

In addition, we held that Colorado Research's protest regarding the Air Force's refusal to provide it with access to data allegedly proprietary to Megapulse was untimely since it had not been filed within 10 days of the Air Force's amendment of the solicitation to include information which Colorado Research subsequently alleged was insufficient.

We find that Colorado Research's second request for reconsideration is untimely. The firm asserts that it has new evidence which demonstrates the Air Force's inconsistencies; this consists of a letter dated May 13, 1981, informing Colorado Research that its proposal had been determined not to be in the competitive range because it would have needed a complete revision in order to have a reasonable chance of being selected for award. Colorado Research asserts that this determination is repugnant to previous Air Force testimony and to our decisions, since Air Force reports to our Office dated October 14 and December 4, 1980 indicated that the proposal was acceptable. This

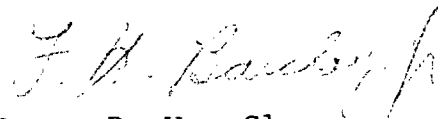
finding of acceptability was confirmed by our review of the technical evaluation team's report and was reported in our decisions. Colorado Research also asserts that there were inconsistencies between various Air Force statements with regard to the existence and availability of proprietary data.

Our Bid Protest Procedures, 4 C.F.R. 21.9 (1981), require that requests for reconsideration be filed within 10 working days after the basis for reconsideration is known or should have been known. We have no evidence as to when Colorado Research received the Air Force's letter of May 13, 1981, stating that it had been eliminated from the competitive range, but we can reasonably assume that it was delivered not later than one week after that date. See generally Rosa Pen Co., Inc.--Reconsideration, B-198803.3, January 22, 1981, 81-1 CPD 34. Thus, Colorado Research should have filed any request for reconsideration within 10 days of receipt of the Air Force letter. However, its request for reopening was not dated until June 23 and was not filed in our Office until June 30, 1981, and is therefore untimely. (We note, however, that a technically acceptable proposal may be eliminated from the competitive range if it has no real chance for award. Hittman Associates, Inc., B-198319, December 17, 1980, 60 Comp. Gen. ____ , 80-2 CPD 347.)

Finally, Colorado Research has submitted to our Office copies of Freedom of Information Act (FOIA) requests which it sent to the Air Force on June 5 and 15, 1981. The firm seeks, among other things, the names and findings of evaluation team members for its own and Megapulse's proposals, the initial and final prices offered by Megapulse, a copy of Megapulse's prior contract, and a list of firms solicited and responding to the protested solicitation. It also requests information on a different solicitation by Hanscom Air Force Base on which Colorado Research apparently was an offeror. Colorado Research states that it reserves the right to further consideration of its protest upon receipt of this information.

In appropriate circumstances, our Office will reconsider a decision if a request is timely filed following receipt of new information under the Freedom of Information Act. See Systems Research Laboratories, Inc.--Reconsideration, B-186842, May 5, 1978, 78-1 CPD 341. We note, however, that Colorado Research's original protest was filed with our Office on July 29, 1980, but the request for information which apparently will be used in an attempt to substantiate that protest was not made until nearly 11 months later. In similar circumstances, we have held that failure to file an early FOIA request constituted failure to diligently pursue a protest and have dismissed requests for review. See, for example, National Systems Management Corporation, B-198811, October 10, 1980, 80-2 CPD 268, and cases cited therein. As for the FOIA requests regarding another Air Force procurement, that procurement is not at issue in this protest.

Colorado Research's second request for reconsideration is dismissed.


For Harry R. Van Cleve
Acting General Counsel



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-199755.3

August 5, 1981

The Honorable Gary Hart
United States Senator
1748 High Street
Denver, Colorado 80218

Dear Senator Hart:

We refer to your continued interest in the protest of Colorado Research and Prediction Laboratory, Inc., concerning the award of a contract under solicitation No. F19628-80-R-0053, issued by the Electronic Systems Division, Air Force Systems Command, Hanscom Air Force Base, Massachusetts.

By decision of today, copy enclosed, we have reaffirmed our prior decision.

Sincerely yours,

A handwritten signature in cursive script, reading "F. R. Van Cleve", is written over the typed name.

For Harry R. Van Cleve
Acting General Counsel